

This is a letter ruling regarding the sales tax treatment of purchases and sales of motor vehicles in which funds are channeled through an escrow account. See 86 Ill. Adm. Code 130.1915. (This is a PLR).

August 30, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of July 24, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, Taxpayer, we respectfully request a binding letter ruling regarding the Illinois Retailers' Occupation Tax ('ROT') and Use Tax ('UT') implications of a federal 'Like-Kind Exchange' transaction. We have previously requested and received a non-binding General Information Letter and our client would like a binding ruling. In order to facilitate your review of the information necessary to respond to the requested binding letter ruling, we have presented the request in the following manner:

- I. Overview and Business Purpose
- II. Form of the Transaction for Federal Income Tax Purposes
- III. Transactions at Issue for Retailers' Occupation and Use Tax Purposes
- IV. Summary of Important Retailers' Occupation and Use Tax Considerations V.
Pertinent Authority and Analysis
- VI. Ruling Requested

I. Overview and Business Purpose

We are requesting a determination regarding the taxability and reporting requirements for ROT and UT purposes, concerning a federal 'Like-Kind Exchange' transaction. Taxpayer is a lessor of tangible personal property (i.e., motor vehicles).¹ The transaction at issue involves the typical purchase, lease, and sale of motor vehicles as modified to qualify under Internal Revenue Code ('IRC') § 1031. The Internal Revenue Service has ruled that exchanges of property (including rental property) by a corporation through an intermediary can qualify under IRC § 1031 as tax-free like-kind exchanges for federal income tax purposes.² The Taxpayer has entered into an agreement with Intermediary³ that qualifies for the federal tax-free like-kind exchange treatment.

Leasing companies historically operate with 'thin margins' or a very limited margin of gross profit. In order to be economically competitive in the marketplace, leasing companies use any opportunity to reduce operating costs. Like-kind exchanges can reduce costs by postponing the gain recognition, that otherwise would be realized, for federal income tax purposes upon disposition of the leased property. The savings realized will enable a leasing company to be more competitive, by passing along the reduced operating costs in the form of reduced lease payments. However, for ROT and UT purposes, the nature and compliance of the transaction will remain unchanged.

II. Form of the Transaction for Federal Tax Purposes

During the course of a leasing transaction, events can be divided into the following three segments or categories: (a) the acquisition of the property by the lessor; (b) the term of the lease; and (c) the disposition of the property by the lessor at the conclusion of the lease term. Simply stated, the lease is born, it lives for a period of time, and it terminates. The complexities of IRC § 1031 only impact the lease transaction(s) at issue when the motor vehicle is (a) sold at the conclusion of the lease, and (b) when a new or replacement vehicle is acquired.

The IRC § 1031 transaction does not impact the relationship between the lessor and lessee during the term of the lease. The lessee will continue to remit all payments during the term of the lease to the lessor. The lease payments will continue as they currently exist, and the lessor will continue to issue invoices to the lessee. The only change in business operation for the proposed IRC § 1031 transaction is upon (1) the sale of the motor vehicle at the conclusion of the lease, and (2) the purchase of a newly-leased motor vehicle by the lessor.

Sale of the Motor Vehicle -- Relinquished Property

The Taxpayer leases motor vehicles. On termination of the lease, Taxpayer disposes of (i.e., sells) the vehicles in one of several ways: (1) the Taxpayer directly sells the motor vehicle to the lessee through the purchase option of the lease; (2) the Taxpayer sells the motor vehicle to the dealer for resale to the lessee, who exercises the purchase option; (3) the Taxpayer sells the motor vehicle directly to the dealer for resale to someone other than the lessee; or (4) the Taxpayer sells the motor vehicle at auction to a dealer for purposes of resale. Under any of these described scenarios, the Taxpayer will dispose of the vehicles ('Relinquished Property') at the termination of the lease through the Intermediary. The Intermediary has been assigned the Taxpayer's rights (but not its obligations) with respect to the sale of the Relinquished Property at the termination of the lease.⁴ The property is sold in accordance with the Taxpayer's directions and instructions either to (a) the lessee, or (b) the dealer for resale. In the first instance, the transaction would be assumed taxable for ROT and UT purposes (e.g., sale to consumer). In the second instance, the transaction would be generally assumed not taxable for ROT and UT purposes (e.g., exempt for resale). The Taxpayer controls the disposition of the Relinquished Property, and the title to the property is transferred directly from the Taxpayer to the purchaser.⁵ The proceeds from the sale are received in a Taxpayer and Intermediary joint bank account ('Account')⁶ which restricts the Taxpayer's right to

receive or otherwise obtain the immediate benefit of the proceeds. The Intermediary merely serves as a qualified Intermediary for federal Like-kind Exchange purposes, but does not change the basic character of the transaction. For this service, the Intermediary receives a fee.⁷

Purchase of a New Motor Vehicle -Replacement Property

The Taxpayer also acquires 'Replacement Property' using the services of the Intermediary.⁸ As with the Relinquished Property, the Intermediary has been assigned the Taxpayer's rights (but not its obligations) with respect to the acquisition of newly leased vehicles ('Replacement Property'). At the Taxpayer's direction, the Intermediary pays for the Replacement Property out of the Account with funds⁹ from the sale of Relinquished Property. If there is a shortfall (the funds in the Account are less than the purchase price of Replacement Property), the Taxpayer will pay the difference. Replacement Property relinquished in a particular exchange is identified within 45 days of the sale of the Relinquished Property. If an exchange does not occur within the shorter of (a) 180 days or (b) the due date, including extensions, of the Taxpayer's federal income tax return, the Taxpayer will recognize gain on the exchange for federal income tax purposes. Again, as in the sale of Relinquished Property, the role of the Intermediary in the purchase of the Replacement Property is merely to provide a service to the Taxpayer. The title for the motor vehicle is transferred directly from the dealer to the Taxpayer and never rests with the Intermediary.

III. Transactions at Issue for ROT and UT Purposes

1. Sale of Motor Vehicle to a Taxable Individual or Other Taxable Entity

As summarized in Scenario I (attached), an individual purchaser (which for the purposes of this ruling is defined as any person or other legal entity) may exercise an option to purchase the leased vehicle at the conclusion of the lease term. By way of comparison, in a typical taxable scenario (not an IRC § 1031 transaction), the Taxpayer (i.e., lessor) (a) sells a motor vehicle, (b) collects the payment (e.g., purchase price plus tax), and (c) remits the appropriate ROT and UT on the transaction, in exchange for (d) the title that is transferred to the lessee. In a qualified IRC § 1031 transaction, the Taxpayer will continue to (a) sell a motor vehicle and (c) remit appropriate ROT and UT, in exchange for (d) the title to the motor vehicle. However, the individual purchaser will be directed to (b) remit their payment for the vehicle to the Account. For ROT and UT purposes, the Taxpayer will continue to document, report, and remit all taxes due on the transaction. The reporting of the transaction will continue to follow the flow of the documentation (i.e., title) at the Illinois Secretary of State. The attachment, 'Scenario I' noted above, depicts the transaction.

It should be noted that the Taxpayer does not typically sell the leased vehicle directly to the lessee at the conclusion of the lease. With some exceptions, the Taxpayer usually sells the leased vehicle to the dealer who resells such vehicle. This transaction is addressed in Scenario II.

2. Sale of Motor Vehicle to a Nontaxable Dealer

In Scenario II (attached), the lessor, at the conclusion of the lease sells the used motor vehicle to a dealer or another nontaxable reseller. The dealer may subsequently sell the vehicle to the lessee or to another third party. By way of comparison, in a typical nontaxable scenario (not an IRC § 1031 transaction) the Taxpayer (i.e., lessor) (a) sells a motor vehicle, (b) receives payment (e.g., purchase price without tax) and a resale exemption, and (c) does not remit ROT and UT on the transaction, in exchange for (d) the title to the motor vehicle. In a qualified IRC § 1031 transaction, the Taxpayer will continue to (a) sell a motor vehicle, (b) receive a resale certificate, and (c) not remit ROT and UT, in exchange for (d) the title to the motor vehicle. However, as noted above, the dealer will be directed to remit their payment for the vehicle to the Account. For ROT and UT purposes, the Taxpayer will continue to document and report the non-taxability of the transaction. The reporting of the transaction will continue to follow the flow of the documentation (i.e., title) at the Secretary of State. The attachment, 'Scenario II' noted above, graphically depicts the transaction.

3. Purchase of a Motor Vehicle for Purposes of Leasing

In a situation where the lessor purchases tangible personal property (i.e., motor vehicles), the lessor is considered the consumer for ROT and UT purposes and, therefore, pays tax based on the selling price of the property. In Scenario III (attached), typically the Taxpayer (i.e., lessor) (a) purchases the vehicle from the seller, (b) pays tax on the selling price and (c) receives title for the motor vehicle. In an IRC § 1031 transaction, the Taxpayer will direct the Intermediary to make payment from the Account to the seller. The Taxpayer will continue to (b) pay tax upon the selling price and (c) receive title. The related lease of the motor vehicle will remain unchanged, and the lessor will continue to remit all rental taxes due upon the lease payments.

IV. Summary of Important Retailers' Occupation and Use Tax Considerations

The proposed transaction does not seek to reduce or eliminate any ROT and UT that is currently due and payable. The Taxpayer seeks to continue its current business practices, without an administrative change for its ROT and UT compliance effort. For ROT and UT purposes, the taxable event(s) follows the transfer of the motor vehicle title, between the buyer and seller. The transfer of the cash from or to an Account for IRC § 1031 purposes should not change current ROT and UT reporting practices.

V. Pertinent Authority and Analysis

Scenario I: Sale of Motor Vehicle to Individual

Pertinent Authority

In general, the ROT and UT is imposed on sales of motor vehicles by a retailer. (35 ILCS 105/10; 35 ILCS 120/3). 'Retailer' means and includes every person engaged in the business of making sales at retail. (35 ILCS 105/2). 'Sale at retail' means any transfer of the ownership of or title to tangible personal property for a valuable consideration to a purchaser. The transfer must be for the purpose of

use or consumption and not for the purpose of resale in any form as tangible personal property. (35 ILCS 120/1; 35 ILCS 105/2).

'Selling price' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, services and property. However, the selling price does not include the value of or credit given for traded-in tangible personal property of like-kind and character as the property sold. (35 ILCS 105/2).

All retailers of motor vehicles are required to comply with the tax collection, remittance and reporting requirements. Retail sales of motor vehicles which are required to be registered or titled with the Secretary of State must be reported by the retailer. A separate transaction return must be prepared for each sale and filed with the Illinois Department of Revenue ('DOR'). (35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; and Ill. Admin. Code §130.540(b)). An exception to this filing requirement exists for sales for resale, which is discussed in Scenario II below.

The retailer must collect the tax from the purchaser and remit the tax (or evidence that the sale was not taxable) to the DOR with each return filed. (35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; and Ill. Admin. Code §130.540(b)). The DOR will issue a UT receipt or certificate of exemption in the purchaser's name. In order to obtain a certificate of title or registration, the UT receipt or certificate of exemption must be submitted to the Secretary of State. (35 ILCS 120/3; Ill. Admin. Code §150.715).

It should be noted that the purchaser may remit the tax directly to the DOR, as opposed to the retailer, in order to expedite the registration and titling of the motor vehicle. This is permissible when the purchaser wants the payment of tax made to the DOR sooner than the retailer is willing or required to file the return and remit the tax. The purchaser must certify to the fact of such delay by the retailer and submit the transaction reporting return and tax directly to the DOR. The DOR will issue the UT receipt to the purchaser, and the transaction reporting return and tax remittance will be credited to the retailer's account with the DOR. However, the retailer will not receive credit for the discount that is provided to retailers as reimbursement for expenses incurred in the tax collection, remittance and compliance process. (35 ILCS 120/3).

Analysis

An individual's exercise of a purchase option at the end of a lease, resulting in the lessee's acquisition of the leased vehicle, is generally a sale at retail by a retailer subject to ROT and UT. The Taxpayer making the sale is required to (a) bill the tax to the purchaser and (b) remit the tax to the state. The purchaser must pay the ROT or UT as a prerequisite to obtaining a registration certificate from the Secretary of State.

In an IRC § 1031 like-kind exchange, the sale of the motor vehicle, which includes the transfer of title, will occur directly between the Taxpayer (i.e., lessor) and the individual (i.e., lessee) who purchases the vehicle for use or consumption. However, as depicted in Scenario I, the payment of the purchase

price and tax must be submitted by the purchaser to the Account for deposit by the Intermediary. This payment procedure is required in order to qualify for the federal income tax deferred gain treatment under IRC § 1031. In this scenario, the Intermediary is merely acting as a third party providing a necessary service to enable the Taxpayer to obtain IRC § 1031 like-kind exchange treatment.

The actual sale at retail and transfer of title, possession, or control of the motor vehicle is made by the Taxpayer to the individual. The Taxpayer is a retailer engaged in the business of making sales at retail. However, the Intermediary is not a retailer and never has title or possession of the motor vehicle. The Intermediary's involvement is primarily limited to the receipt, management, and subsequent distribution of funds obtained from the sale and purchase of motor vehicles.

In addition, the Taxpayer receives valuable consideration, through its vested interest and ownership rights in the Account, equal to the selling price as statutorily defined and paid by the individual. The Taxpayer's receipt of valuable consideration in exchange for the transfer of title or possession provides further evidence that the sale at retail is between the Taxpayer and the individual. Although the purchaser remits the consideration to the Intermediary, the funds are deposited into the Account held in interest for the Taxpayer. Ownership rights in the Account are evidenced by the Taxpayer's receipt of the interest income earned on the funds in the Account.

Finally, the title of the motor vehicle passes directly from the Taxpayer to the purchaser upon the sale of the vehicle. The ROT and UT imposition and reporting requirements should also follow the legal passage of title. In other words, the Taxpayer making the sale at retail and transfer of title is required to bill tax to the purchaser for remittance to the state. The purchaser's payment of ROT tax upon the exercise of the purchase option, based on the selling price as statutorily defined, will satisfy the Secretary of State's requirements to obtain a registration certificate.

Conclusion

The Taxpayer should continue to bill the ROT tax to the purchaser and remit such tax to the state. The tax will continue to be based upon the selling price as defined by statute and paid by the purchaser. The Intermediary's services, as defined under IRC § 1031, will have no impact on the ROT and UT imposition or compliance on the sale of the motor vehicle by the Taxpayer to the individual purchaser. The tax imposition will be the same whether the purchaser submits payment directly to the Taxpayer, as in the past, or to the proposed Taxpayer's Account, managed by the Intermediary.

Scenario II: Sale of Motor Vehicle to Nontaxable Dealer

Pertinent Authority

A sale of property for purposes of resale is exempt from the ROT and UT. The term 'sale at retail' specifically excludes sales to a purchaser for purposes of resale. (35 ILCS 120/1; 35 ILCS 105/2; Ill. Admin. Code §130.120(c); Ill. Admin.

Code §130.210; and Ill. Admin. Code § 150.201). A sale for resale is not subject to tax if the purchaser presents a resale certificate to the seller. (35 ILCS 120/2c; Ill. Admin. Code §130.1405). A blanket certificate of resale may be accepted by a seller from a purchaser whose purchases are exclusively for resale. (Ill. Admin. Code §130.1405).

As noted in Scenario I above, a separate return must be filed to report each retail sale of motor vehicles that are required to be registered with the Secretary of State. (35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; and Ill. Admin. Code §130.540(b)). However, if the retailer of motor vehicles transfers more than one motor vehicle to another retailer for the purpose of resale, the seller for resale may report the transfer of all motor vehicles to the DOR on one return. (35 ILCS 120/3).

Analysis

When an individual declines to exercise the purchase option at the end of the term of the lease, the motor vehicle is typically sold by the Taxpayer to a third party, such as a dealer. The sale to the dealer is nontaxable sale for resale, which is specifically excluded from the definition of 'sale at retail.' As a result, the Taxpayer making the sale must (a) obtain a resale exemption certificate from the dealer, (b) bill the dealer for the purchase price without tax, and (c) transfer the title to the dealer.

In an IRC § 1031 like-kind exchange, the sale of the motor vehicle, which includes the transfer of title, will occur directly between the Taxpayer and the dealer. Similar to Scenario I, the payment of the purchase price must be submitted by the dealer to the Intermediary for deposit into the Account. This payment procedure is required in order to qualify for the federal income tax deferred gain treatment under IRC § 1031. In this scenario, the Intermediary is merely acting as a third party providing a necessary service to enable the Taxpayer to obtain IRC § 1031 like-kind exchange treatment.

The actual sale for resale and transfer of title, possession, and control of the motor vehicle is made by the Taxpayer to the dealer. The Intermediary never has title or possession of the motor vehicle. The Intermediary's involvement is primarily limited to the receipt, management, and subsequent distribution of funds obtained from the sale and purchase of motor vehicles.

In addition, the Taxpayer receives valuable consideration, through its vested interest and ownership rights in the Account, equal to the purchase price paid by the dealer. The Taxpayer's receipt of consideration in exchange for the transfer of title and possession provides further evidence that the sale for resale is between the Taxpayer and the dealer. Although the dealer remits the consideration to the Intermediary, the funds are deposited into the Account held in interest for the Taxpayer. Ownership rights in the Account are evidenced by the Taxpayer's receipt of the interest income earned on the funds in the Account.

Finally, the title of the motor vehicle passes directly from the Taxpayer to the dealer upon the sale of the vehicle. The ROT and UT tax reporting requirements should also follow the legal passage of title. In other words, the Taxpayer making the nontaxable sale for resale to the dealer and executing the transfer of title is

required to obtain a resale exemption certificate from the dealer. The Taxpayer would also be responsible for reporting the nontaxable sale for resale on the appropriate tax return filed with the state.

Conclusion

The Taxpayer should continue to obtain a resale exemption certificate from the dealer. Since ROT and UT is not due on a nontaxable sale for resale, there is no requirement to remit such tax to the state. The Intermediary's services, as defined under IRC § 1031, will have no impact on the ROT and UT imposition or reporting requirements for the sale of the motor vehicle by the Taxpayer to the dealer. The tax implications, including the collection of a resale exemption certificate, will be the same whether the dealer submits payment directly to the Taxpayer, as in the past, or to the proposed Taxpayer's Account, managed by the Intermediary.

Scenario III: Purchase of a Motor Vehicle for Leasing Purposes

Pertinent Authority

The sale of tangible personal property to purchasers who will lease such property for more than one year is a retail sale subject to ROT. (Ill. Admin. Code § 130.220). The lessor is the user of the property and is subject to the UT upon the purchase of the tangible personal property. (Ill. Admin. Code §130.2010(b)). An exception exists for the sale of automobiles to an automobile renter for use as rentals under lease terms of one year or less. (Ill. Admin. Code § 130.220).

As a taxable sale at retail, the seller must collect the tax from the purchaser/lessor and remit the tax to the DOR. (35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; and Ill. Admin. Code §130.540(b)). The DOR will issue a UT receipt in the purchaser's name. (35 ILCS 120/3; Ill. Admin. Code §150.715).

It should be noted that the purchaser may remit the tax directly to the DOR, as opposed to the seller, in order to expedite the registration and titling of the motor vehicle. This is permissible when the purchaser wants the payment of tax made to the DOR sooner than the seller is willing or required to file the return and remit the tax. The purchaser must certify to the fact of such delay by the seller and submit the transaction reporting return and tax directly to the DOR. The DOR will issue the UT receipt to the purchaser, and the transaction reporting return and tax remittance will be credited to the seller's account with the DOR. (35 ILCS 120/3).

The lease of tangible personal property to the lessee is generally not subject to ROT or UT. (Ill. Admin. Code §130.2010; Ill. Admin. Code §150.305(e)). The lease of automobiles is not considered a sale of tangible personal property to a purchaser for use or consumption within the meaning of the ROT. Therefore, the lessor is not required to remit ROT measured by the gross receipts of the lease. (Ill. Admin. Code §130.2010(b)). It is understood that the tax treatment of rentals for periods of one year or less differs from that of leases. However, the tax treatment of rentals for periods of one year or less are beyond the scope of this ruling request.

Analysis

In Scenario III, the Taxpayer purchases motor vehicles from the seller for purposes of leasing to individuals. Upon payment of consideration to the seller, the Taxpayer will receive title to the motor vehicles. Such purchases are considered sales at retail subject to UT. However, the Taxpayer may either pay UT to the seller or submit the tax directly to the state, provided the seller is not willing or not required to remit the tax within the time desired by the purchaser. The total UT is based on the selling price and will be calculated according to the statutory requirements. It should be noted that the exact tax calculation is beyond the scope of this ruling request, which pertains to the Taxpayer's responsibility to bill and remit the tax, as opposed to the Intermediary.

In an IRC § 1031 like-kind exchange, the purchase of the motor vehicle, which includes the transfer of title, will occur directly between the Taxpayer and the seller. However, as depicted in the exhibit 'Scenario III,' the Taxpayer's payment to the seller will be withdrawn from the Account and submitted to the seller by the Intermediary. This payment procedure is required in order to qualify for the federal income tax deferred gain treatment under IRC § 1031. In this scenario, the Qualified Intermediary is merely acting as a third party providing a necessary service to enable the Taxpayer to obtain IRC § 1031 like-kind exchange treatment.

The actual purchase of the motor vehicle and transfer of title, possession, and/or control is made by the seller to the Taxpayer. The Intermediary never has title or possession of the motor vehicle. The Intermediary's involvement is primarily limited to the receipt, management, and subsequent distribution of funds obtained from the sale and purchase of motor vehicles.

In addition, the seller receives valuable consideration, through its vested interest and ownership rights in the Account, equal to the purchase price paid by the Taxpayer. The Taxpayer's payment of consideration in exchange for the title to the motor vehicle provides further evidence that the retail sale is between the Taxpayer and the seller. Although the Intermediary remits the consideration to the seller, the funds are disbursed from the Account, which is held in interest for the Taxpayer. Ownership rights in the Account are evidenced by the Taxpayer's receipt of the interest income earned on the funds in the Account.

Finally, the title of the motor vehicle passes directly from the seller to the Taxpayer upon the purchase of the vehicle. The ROT and UT imposition and reporting requirements should also follow the legal passage of title. In other words, the Taxpayer making the purchase and receiving the title is required to pay UT on the motor vehicle, which is purchased for purposes of leasing.

Conclusion

The Taxpayer should continue to pay tax (1) to the seller or (2) directly to the state upon the purchase of the motor vehicles for purposes of leasing. The Taxpayer (i.e., lessor) is considered the end user of the property, and the transaction is a sale at retail subject to UT. The Intermediary's services, as

defined under IRC § 1031, will have no impact on the ROT and UT imposition on the Taxpayer's purchase of the motor vehicle. The tax imposition will be the same whether the Taxpayer submits payment directly to the seller, as in the past, or to the proposed Taxpayer's Account, managed by the Intermediary.

VI. Ruling Requested

Based upon the foregoing statements, please confirm our understanding of the following:

1. The taxable sale of a motor vehicle at the conclusion of the lease (e.g., sale to the lessee) is a transaction for ROT and UT purposes between the Taxpayer and the customer. The Taxpayer would be the party responsible for remittance of the appropriate ROT or UT to the state of Illinois. The required IRC § 1031 payment to the Account, managed by an Intermediary, does not change the billing and payment process of the Taxpayer.
2. The sale of a motor vehicle at the conclusion of the lease (e.g., sale to a dealer) is a nontaxable transaction for ROT and UT purposes between the Taxpayer and the dealer. The Taxpayer is required to secure the necessary Sale for Resale Exemption documentation (valid sales tax number or exemption number) from the dealer to document the exempt status of the sale of the motor vehicle. The required IRC § 1031 payment to the Account, managed by an Intermediary, does not change the exchange of the motor vehicle title for a valid Sale for Resale Exemption, between the buyer (i.e., dealer) and the seller (i.e., lessor or Taxpayer).
3. The purchase of a new motor vehicle (i.e., Replacement Property) for leasing operations is a taxable transaction, for ROT and UT purposes, between the Taxpayer and the dealer. The required IRC § 1031 payment from the Account does not change the exchange of the motor vehicle title for the purchase price and the appropriate amount of tax payable to the vendor or the state. The fact that an Intermediary manages the Account does not change the issue that the transaction is between the buyer (i.e., Taxpayer) and the seller (i.e., dealer or vendor).

As you review the request, we will be happy to answer any questions you may have or provide clarification of any of the facts, if necessary to enable the rendering of an opinion. If a favorable ruling is expected, anything that can be done to expedite the process would be most appreciated.

As we discussed, in order to expedite this binding ruling process, please acknowledge your agreement with the conclusions set forth above by signing the document where indicated below. If you have any questions or require additional information, please do not hesitate to contact ***.

Based upon the information and documents presented, we agree with statements 1, 2, and 3 in Section VI of your ruling request. It is our understanding that TAXPAYER ("Taxpayer") purchases vehicles directly from dealers and sells vehicles directly to dealers or to purchasers. The funds for

such purchases and sales are channeled through a Taxpayer and Intermediary joint bank account ("Account"). Intermediary performs a financial service for Taxpayer and is paid a commission for its services, but is not in the business of selling motor vehicles at retail and never takes title to any of the motor vehicles being purchased or sold. As long as this is the case, we agree that the transactions are between Taxpayer and the dealers and purchasers. The channeling of funds through the Account managed by Intermediary does not change the Retailers' Occupation Tax and Use Tax obligations of Taxpayer.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.

¹ The Taxpayer operates several leasing divisions, operating under the trade names NAMES.

² The Taxpayer has developed a deferred like kind exchange program under IRC § 1031 and § 1.1031 (k)-1 of the Federal Treasury Regulations. The Taxpayer's program encompasses acquisitions and dispositions of vehicles subject to lease under its Lease Plan, NAME-branded and private label lease programs, with the exception of 'totaled' vehicles (i.e., vehicles involved in an accident). Insurance proceeds received from totaled vehicles are reinvested in acquisitions and gain is deferred under IRC § 1033.

³ The Taxpayer has entered into a written 'Master Exchange Agreement' with Intermediary, an independent third party financial institution. Intermediary is a single member limited liability company treated for federal income tax purposes as a division of its sole member.

⁴ Article Two, Paragraph C of the Master Exchange Agreement.

⁵ Article Two, Paragraph E of the Master Exchange Agreement.

⁶ Article Three, Paragraph A of the Master Exchange Agreement describes the various accounts established by the Intermediary and the Taxpayer with respect to the program.

⁷ Article Four, Paragraph A of the Master Exchange Agreement.

⁸ NAME acquires leases and vehicles from a number of 'sourcing agents' with whom it has contractual relationships. The contractual agreement between NAME and each sourcing agent provides that the sourcing agent will originate and purchase vehicles and leases from eligible dealers and sell them to NAME if they meet NAME's eligibility criteria. The sourcing agent assigns its rights in the vehicles and leases and its rights under its contract with the dealer to NAME. Each vehicle is titled in the name of NAME or one of its private label names for state law purposes.

⁹ All electronic funds transfer ('EFT') disbursements are made out of a joint Intermediary-Taxpayer disbursement account ('JDA') which serves as a cash clearinghouse for disbursements. See Article Three, Paragraph A of the Master Exchange Agreement.